

The Client's New Voice

By Pamela Woldow



Most commentators agree that the economically-driven sea change in the legal profession has changed the way legal services are procured and has shifted the balance of negotiating and pricing power from law firms to their clients. Corporate counsel now have mandates from the C-Suite to do more with less, contain costs, think outside the box and be smarter in how they use and manage outside counsel.

With those new marching orders, we are seeing a whole new generation of RFPs. Generally, speaking, clients are becoming far more assertive and much more demanding in specifying what they expect from outside counsel. In the last several years, the use of Requests for Proposals (RFPs) for selecting outside counsel has increased by roughly 300%. Not only has RFP use increased, but the former kind-and-gentle tone that requested firms to please tell their clients how much they would charge has been replaced by a different and more directive voice. In short, clients no longer automatically accept what firms say they intend to charge, and no longer acquiesce to annual legal fee increases.

The language of many current RFP's now includes very specific questions not just about a firm's legal expertise, but about *how* legal services will be delivered, budgeted, monitored and managed. In-house counsel are making clear what they want to pay and how they want services delivered. Increasingly, they also have begun to insist that their outside law firms provide additional no-cost perks.

The following excerpts from a broad variety of recent RFPs illustrate the new client concern with costs and efficient service delivery:

- “What processes and technologies has your firm invested in recently that have increased the productivity of your lawyers and/or reduced your internal costs to benefit clients?”
- “Describe the training and resource support your firm provides to its lawyers for project management and case/transaction budgeting.”
- “Do you have a formal process for forecasting, tracking, communicating, timely updating, and managing a legal matter budget effectively?”
- “Efficiency in staffing and overall cost containment are factors we use to evaluate outside counsel.”

- “Provide a detailed flat fee billing proposal. Break down the proposal into stages of work and the fees for each stage.”
- “Provide a rate proposal that reflects your consideration of all feasible methods to achieve administrative efficiencies and cost reduction and predictability.”
- “We are focused upon reducing the amount expended for legal services as well as avoiding unanticipated, unplanned fees and expenses.”

Equally telling, RFPs are making clear what they will *not* accept:

- “We will not pay for a) time spent by summer associates and first and second year associates; b) time spent de-briefing lawyers on the results of meetings or teleconferences; c) educating new or replacement lawyers being added to the team to become familiar with the project; and d) lawyers who are not part of the core team.”
- “Third year associate hours may be billed only during certain phases.”
- “We expect that your firm’s overall rates will not increase in 2011.”
- “We will not pay for busted deal fees.”

Perhaps most astonishing – and most illustrative of how confidently clients now wield the whip-hand – are RFP demands for what are euphemistically labeled “value-added services,” but could most accurately be characterized as “freebies:”

- “We expect you to provide an open counseling line.”
- “Please provide the number of short term secondees (less than 6 months) you will provide free of charge.”

Or check out this cafeteria-style set of client expectations:

- Please list value-added services that your firm will agree to provide at no additional cost as part of participation in [our select counsel pool] (e.g., non-billable advice, continuing legal education, technology, online research resources). Please also list any significant educational seminars conducted for us over the last 4 years, including time and place, topic and instructor, and provide the frequency with which your firm is willing to provide such seminars over the next 4 years.

Whether these deal-sweeteners are requested in connection with fixed-fee or other alternative fee arrangements or just as incentives for hourly-rate services, clearly clients are building new parameters into counsel selection. I leave it to you to select the correct characterization:

1. We’re not in Kansas anymore, Toto.
2. The worm has turned.
3. It’s a whole new ball game.
4. The new Golden Rule: the person with the gold rules.
5. All of the above.